Court and the Court of Special Appeals that Petitioner/Plaintiff was Contributory Negligent as a matter of law.

F3) Whether or not the Jury Answer to Jury Verdict Sheet Question No. 2 is ambiguous because the Jury could have deemed Petitioner's/Plaintiff's Contributory Negligence not to have been a cause of his injury since, without extension of the ladder by the company foreman, merely holding the ladder steady well below the power line would never have caused electrical contact nor injury.

F4) Whether or not, in the light most favorable to Petitioner/Plaintiff, the Circuit Court missed an inference wherein Petitioner had a Last Clear Chance defense against his employer (Sieglein Roofing and Siding Company) via the Primary Negligence of its owner and the Secondary Negligence of its foreman.

F5) Whether or not Petitioner's right to a jury trial and right to equal protection of the law to have a Last Clear Chance defense recognized by the Circuit Court (Maryland Declaration of Rights Articles 5, 19, 20, 23, and 24 - United States of America Constitutional Amendments 7 and 14) were violated by Maryland's common law of Contributory Negligence.

F6) Whether or not Maryland's common law of

Contributory Negligence is unconstitutional.

F9) Whether or not the common law of Contributory Negligence could encourage and enable a Defendant by conspiring to commit fraud to evade liability for Petitioner's/Plaintiff's injuries and thereby deprive him of a fair trial.

F10) Whether or not this Court should replace Maryland's common law of Contributory Negligence with the principles of Comparative Negligence.

5. The COSA stated that it could not answer these questions in Appendix F of Petition No. 04-1676 at page App. 9. Therefore, **the COA was Campbell's state court of last resort**.

6. Campbell subsequently failed to file a COSA Brief of Appellant by the March 23, 2005 deadline and his COSA appeal was dismissed on April 13, 2005. However, the COSA was not the state court of last resort and this Court still has jurisdiction to consider Campbell's legal questions via a Conditional Cross-Petition for Writ of Certiorari to the COA.

7. Petitioner herein filed a timely Petition in this Court which was put on the docket on June 14, 2005. Respondent Campbell has until 11:59 pm on July 14, 2005 to file a Conditional Cross-Petition for Writ of Certiorari to the COA.

8. Rather than filing a Brief in Support or Brief in Opposition to Petitioner's Petition No. 04-1676 now before

this Court, Campbell filed a waiver June 30, 2005 which this Court put on the docket July 6, 2005.

9. This motion by Petitioner has met the 11:59 pm July 14, 2005 deadline in accordance with Supreme Court Rule 12.5 though Petitioner doubts that a Campbell Conditional Cross-Petition will be filed to meet this same deadline. Campbell's settlement agreement in BGE's interest which Petitioner alleges exists forbids Campbell from filing a timely Conditional Cross-Petition for Writ of Certiorari to the COA.

10. When the trial judge granted the J. N. O. V., Campbell was not the only one who lost. The 7th Amendment of the United States Constitution states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

11. If the trial judge's J. N. O. V. was erroneous, the members of the jury were disenfranchised when they voted on their verdict. Hopefully, disenfranchised is used properly here. If not, Petitioner's meaning should still be adequately conveyed.

12. Since the 7th Amendment was included in the Bill of Rights as a protection against judges abusing their power, its effect is to restrain a government and limit governmental abuse of its citizens.

13. Therefore, Campbell alone did not lose by an

erroneous J. N. O. V. The jury and all United States citizens lost if the J. N. O. V. was erroneous.

14. Because this issue is so fundamental to all United States citizens, the jury should be contacted and informed that their verdict is in jeopardy. They were not present for the J. N. O. V. and could not defend their verdict properly.

15. Petitioner attempted to view the December 4, 1991 Voir Dire Sheet containing prospective jurors and the December 13, 1991 Jury Verdict Sheet signed by the Forewoman. (The December 4, 1991 Campbell, supra, trial transcript indicates that prospective jurors 1, 2, 4, 18, 30, 35, 50, 58, 61, 65, 79, 85, 93, 110, 121, and 122 were struck.)

16. The Circuit Court of Baltimore City and the Maryland State Archives have misplaced five parts of the Campbell, supra, Record which include everything prior to December 20, 1991. The Jury Verdict Sheet contained in the 1992 COSA Record Extract is not a copy of the signed Jury Verdict Sheet. Specifically, the December 4, 1991 Voir Dire Sheet and the December 13, 1991 signed Jury Verdict Sheet have been misplaced.

17. Petitioner has been working with the Circuit Court of Baltimore City file clerks and the personnel of the Maryland State Archives to no avail since he received Campbell's waiver in an effort to contact the Campbell, supra, Forewoman and/or any jury member to intervene and file a Conditional Cross-Petition for Writ of Certiorari to the COA.

WHEREFORE, Petitioner moves this Honorable Court to

Order or Compel the retired trial judge and parties present at the December, 1991 trial of Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company, a body corporate to provide this Court with the December 4, 1991 Voir Dire Sheet containing prospective jurors and the December 13, 1991 Jury Verdict Sheet signed by the Forewoman. Further, Petitioner moves this Honorable Court to appoint counsel to contact the actual Campbell, supra, jury to inform them that their unanimous jury verdict of December 13, 1991was nullified by the trial judge in what the Court of Appeals of Maryland Petitioner Campbell and Respondent Campbell herein has alleged was an erroneous J. N. O. V. Finally, Petitioner moves this Honorable Court to extend leave for the jury to intervene in order to defend their December 13, 1991 verdict and file a Conditional Cross-Petition for Writ of Certiorari to the Court of Appeals of Maryland.

Respectfully Submitted,

s/ Gregory Shawn Mercer
Gregory Shawn Mercer, pre se
3114 Borge Street
Oakton, Virginia 22124
(703) 591-4662

APPENDIX NN

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202)-479-3011

July 19, 2005

Mr. Gregory Shawn Mercer
3114 Borge Street
Oakton, VA 22124

Re: Gregory Shawn Mercer
v. William Aloysious Thomas, III, et al.
No. 04-1676

Dear Mr. Mercer:

The "motions" received July 15, 2005, are herewith returned. This court does not appoint counsel prior to granting a petition for writ of certiorari and setting a case for oral argument. Nor does this Court compel the production of documents or extend leave for parties to intervene. The petitioner is responsible for appending lower court documents to the petition for a writ of certiorari, and a party seeking to intervene must file a motion for leave to intervene.

Very truly yours,

WILLIAM K. SUTER, Clerk

By

s/ Christopher W. Vasil
Christopher W. Vasil
Chief Deputy Clerk

cc: Robert B. Campbell
Barbara A. Gaughan
David F. Grimaldi

APPENDIX OO

Document 1

[Maryland State Archives Letterhead]

MARYLAND STATE ARCHIVES

July 26, 2005

Greg Mercer
3114 Borge Street
Oakton, Virginia 22124

Dear Mr. Mercer:

Thank you for your inquiry. This letter confirms that the staff of the Maryland State Archives has reviewed its holdings regarding:

BALTIMORE [CITY] CIRCUIT COURT
(Civil Papers, Equity and Law)
MSA T2691
Dates: 1987
Box No.: 399
Description: Case Number 87323051, Bobby Campbell vs. BG&E
Accession No.: 2000/04/03
MSA No.: T2691-2026
Location: HF/8/35/20

A file for this case was located. The folder located is labeled Part VI. The first document enclosed is dated December 20, 1991. No other materials for this case have been located at the Archives.

Sincerely,

s/ Michael McCormick
Michael McCormick
Director of Reference Services

Hall of Records
350 Rowe Boulevard, Annapolis, MD 21401
Telehone: 410-260-6400
MD Toll Free: 800-235-4045
Fax: 410-974-3895
TTY users call MD Relay
Internet address: http://mdsa.net
e-mail address: archives@mdarchives.state.md.us

Document 2

MSAREF.NET, MSA SC 5458
An Archives of Maryland Publication

| >Edit & Modify Entries | > Search |
> Search MAILREF | > Contact Webmaster |
> Home | >End Session

MSA SC 5458-49-5944

Dates: 2005/1/20
Description: Pat Henry
Baltimore City Circuit Court
Family Division, Room 109
111 N. Calvert Street
Baltimore, MD 21202
410.333.3704

BCCC, T-2691, Civil Papers
Campbell Jr. vs. Balt. Gas & Electric,
Case #87323051 / CL 73959
Box 399, HF/8/35/20

Pull file to be sent to court. Mark Weygandt

2005/1/24 File pulled and UPS to court. ChrisD

Accession No.: MSA SC 5458-49-5944

Date Entered: 01/20/2005
Date Completed: 01/24/2005
No. Pages: 1
Amount paid: $0.00
Amount due: $0.00
Tracking No.: T 05-12006

Link to corresponding MAILREF record 05-12006

Notes Edit Database Entry

| >Edit & Modify Entries | > Search |
> Search MAILREF | > Contact Webmaster |
> Home | >End Session

System design by Dr. Edward C. Papenfuse and Nancy Bramucci. Programmed in *Microsoft SQL Server 7.0* and *Cold Fusion 4.0* by Nancy Bramucci. Technical support provided by Wei Yang, Dan Knight, Tony Darden, and Greg Lepore. Version 2.3

http://msaref.net/description.cfm?item=5944&serno=49
1/24/2005

Document 3

RUN DATE: 07/27/2005

STATE COURT OF SPECIAL APPEALS
EVENT DESCRIPTION UPDATE SCREEN

CASE TITLE: ROBERT B. CAMPBELL, JR. VS. BG&E
TRM/CASE#: 2004 01932

LINE CONTROL	TRAN CODE	PR/ CODE	ENTRY DATE	COMMENT DESCRIPTION
0019.00	BLNK	P	20050413	
0020.00	MAND	P	20050513	Mandate issued
0021.00	COMM		20050517	Record in basement. plg
0022.00	COMM		20050711	Full case record prepared / sent to Cir. Ct. mg

END OF DATA P / N PAGE 0002

CERTIFIED TRUE COPY:
Leslie D. Gradet, Clerk
Court of Special Appeals

Document 4

Circuit Court for Baltimore City
Frank M. Conaway, Clerk
Civil Division, Room 462
111 North Calvert Street
Baltimore, Maryland 21202

July 29, 2005

Mr. Greg Mercer:

Thank you for your inquiry. This letter confirms that the staff of the Circuit Court for Baltimore City has reviewed its holdings regarding Case Number 24-C-87-323051 / CL73959.

On January 24, 2005, the Maryland State Archives sent the Circuit Curt for Baltimore City what it had as the archived file for **Campbell vs BG & E**. The returned file from the Maryland State Archives consisted of a folder labeled Part VI with the first document enclosed dated December 20, 1991. On July 11, 2005, the Court of Special Appeals returned to the Circuit Court for Baltimore City seven brick binders with documents filed on or after August 24, 2004 for the above mentioned case. Included in the seven volumes is a copy of the complete trial transcript from December 3, 1991 to December 13, 1991.

The Circuit Court for Baltimore City has made an extensive search since July 8, 2005. No other materials for

this case have been located at the Circuit Court for Baltimore City.

Sincerely,

s/ Tanya Holt
Tanya Holt
Civil Manager

APPENDIX PP

No.

IN THE SUPREME COURT OF THE
UNITED STATES

In re GREGORY SHAWN MERCER, Petitioner

On Petition for Writ of Certiorari
to the Court of Appeals of Maryland

APPLICATION FOR EXTENSION OF TIME TO FILE
PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

GREGORY SHAWN MERCER, PRO SE
Counsel of Record
3114 Borge Street
Oakton, Virginia 22124
(703)-591-4662

Filed: August 1, 2005 Received: August 2, 2005

TABLE OF AUTHORITIES

28 U.S.C. § 1257(a) [App. 170]

28 U.S.C. § 1651(a) [App. 170]

Amendment VII to the U. S. Constitution [App.171]

In re Leaf Tobacco Board, 222 U.S. 578 (1911) [App. 170]

Zipes vs. Trans World Airlines, Inc., 455 U.S. 385, 390 (1982) [App. 170 - 171]

To the Honorable William H. Rehnquist, Chief Justice of the Supreme Court of the United States and Circuit Justice for the State of Maryland.

Petitioner Gregory Shawn Mercer prays for a 60-day extension of time to file his Petition for Common-Law Writ of Certiorari in this Court to and including August 11, 2005. The final judgment in Robert B. Campbell, Jr. vs. Baltimore Gas and Electric Company, the Court of Appeals of Maryland (hereafter "COA"), September Term 2004, Petition Docket No. 490, was entered on December 23, 2004. A petition for rehearing (Motion for Reconsideration) in Campbell, supra, was denied March 14, 2005. Likewise, the final judgment in Gregory Shawn Mercer vs. William Aloysious Thomas, III, the COA, September Term 2004, Petition Docket No. 434, was entered on December 23, 2004. A petition for rehearing (Motion for Reconsideration) in Mercer, supra, was denied March 14, 2005. Both COA petitioners requested to be joined to the other petitioner in their COA petitions. The Mercer, supra, petition was filed October 27, 2004. The Campbell, supra, petition was filed December 2, 2004. The COA joined these petitions and issued common final

judgments on the same day [Appendix RR at App. 177]. The final judgments of the COA [were] identical for both cases on December 23, 2004, "denied as there has been no showing that review by certiorari is desirable and in the public interest." See [Appendices J, K, V, & W at App. 18, 19, 52, & 53].

Petitioner Mercer (hereafter "Mercer") filed Petition No. 04-1676 in this Court on Monday, June 13, 2005 and made Respondents Robert B. Campbell, Jr. (hereafter "Campbell") and Baltimore Gas and Electric Company (hereafter "BG&E") parties. Petition No. 04-1676 was put on the docket of this Court on June 14, 2005. Campbell did not file a Petition in this Court by his 90-day deadline. However, in accordance with Supreme Court Rule 12.5, Campbell had until July 14, 2005 to file a Conditional Cross-Petition having been named a Respondent. Guessing that BG&E had settled with Campbell without alerting Mercer to prevent Campbell from helping Mercer's cause in this Court, Mercer (pro se) filed a Motion on July 14, 2005 almost at the last minute, literally. See Appendix [MM at App. 151]. Campbell did not file a Conditional Cross-Petition. The Motion was returned to Mercer by the Clerk of this Court on July 21, 2005. See Appendix NN at [App. 159].

In accordance with 28 U.S.C. §§ 1257(a) & 1651(a) and In re Leaf Tobacco Board, 222 U.S. 578 (1911), Mercer can file a Petition for Common-Law Writ of Certiorari. Portions of this common-law writ have been pre-drafted in Mercer's Reply to Brief in Opposition, Petition No. 04-1676, distributed to this Court's justices the week of July 25, 2005. Unlike Zipes vs. Trans World

Airlines, Inc., (hereafter "TWA") 455 U.S. 385, 390 (1982) where all parties were aware of settlement negotiations and petitions to this Court might have been moot if settlement agreements were reached with TWA, Mercer was not aware of settlement negotiations between Campbell and BG&E. The fact of whether Campbell settled with BG&E is actually irrelevant as Campbell's decision not to file a Petition or Conditional Cross-Petition in this Court serves BG&E's interest isolating Mercer. For whatever reason Campbell did not file these petitions, Mercer was surprised and now has a weakened standing to have this Court review Campbell, supra.

However, the 7th Amendment of the United States Constitution gives a wonderful standing to the jury in Robert B. Campbell, Jr. vs. Baltimore Gas and Electric, a body corporate, Circuit Court for Baltimore City, Maryland, Case No. 87323051 / CL73959, December 4-13, 1991. See Petition No. 04-1676, Appendix M [at] App. 22 - 27. The Baltimore City trial judge excused the jury after its verdict and subsequently reexamined the jury verdict granting a Judgment Notwithstanding the Verdict (hereafter "JNOV"). [See Appendix M at App. 27 - 29]. The 7th Amendment states:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Mercer has attempted to find [out] the identity of the members of the Campbell jury. Through accident or design, the Maryland State Archives (hereafter "MSA") has only the 6th folder of the original Circuit Court case. In the misplaced or destroyed five previous folders are the December 4, 1991 Voir Dire Sheet with prospective jurors names and the December 13, 1991 Jury Verdict Sheet signed by the Forewoman. See Appendix [OO at App. 161], document 1. The MSA sent the folder labeled "Part VI" back to the Circuit Court on January 24, 2005. See Appendix [OO at App. 163], document 2. The Court of Special Appeals of Maryland (hereafter "COSA") returned the record from Campbell's Maryland Rule 2-535(b) Motion for Revisory Powers back to the Circuit Court on July 11, 2005. See Appendix [OO at App. 165], document 3. The Circuit Court found just what the MSA and the COSA had sent it. Nothing further. See Appendix [OO at App. 166], document 4. There is no current public record of the identity of the members of the Campbell jury from 12/4/91 to 12/13/91.

The point of Campbell's COA Petition of December 2, 2004 was that the JNOV granted by the Baltimore City trial judge was erroneous because the jury could have followed the jury instructions based on the evidence presented and determined that Campbell's steadying [of] an unextended 40-foot ladder approximately 8 feet below a power line was ***not a cause*** of his injury. The foreman's extension of the ladder into the power line was ***the proximate cause*** of Campbell's injury. The foreman had been warned by the company owner just two hours earlier to watch for power lines. While Campbell was

Contributorily Negligent as a matter of law, Campbell should still have been able to recover the $4.85 million jury award from BG&E and the company he worked for jointly and severally because *Campbell's Contributory Negligence was not a cause of his injury*. Yet the trial judge violated the 7th Amendment using a Contributory Negligent common law as justification. Herein lies the question presented for review in Mercer's Petition No. 04-1676, **"Whether or not any contributory negligence common law is unconstitutional."**

Mercer's motion (Appendix [MM at App. 151]) advocates 1) identifying the jurors, then 2) appointing them counsel, then 3) having the jury's counsel move to intervene in Campbell, supra, then 4) having the jury's counsel petition for a writ of certiorari. This Court's Clerk's 7/19/05 letter (Appendix NN at [App. 159]) establishes that the correct order of these steps must be 1) petitioning this Court for a writ of certiorari, then 2) appointing counsel for the jury, then 3) having the jury's counsel move to intervene in Campbell, supra. The actual identity of the jurors is not relevant in hindsight.

WHEREFORE, Petitioner herein, Gregory Shawn Mercer, applies for an extension of the 90-day period to Petition to this Court after Campbell vs. BG&E, COA, September Term 2004, Petition Docket No. 490. The extension to 150 days would set the deadline of 11:59 pm on August 11, 2005 which is 10 days in the future. The Caption of the Petition will be *In re* Gregory Shawn Mercer, [Petitioner] and will ask this Court to appoint counsel for the Campbell jury in order to give the jury an

opportunity to intervene in this matter and defend their unanimous verdict in accordance with the 7th Amendment.

Respectfully Submitted,

s/ Gregory Shawn Mercer
Gregory Shawn Mercer, pre se
3114 Borge Street
Oakton, Virginia 22124
(703) 591-4662

APPENDIX QQ

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

August 3, 2005

Gregory Shawn Mercer
3114 Borge Street
Oakton, VA 22124

Re: Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company

Dear Mr. Mercer:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case was received August 1, 2005. The application is returned for the following reason(s):

Only a party to the proceeding in the court whose judgment is sought to be reviewed may file documents in this Court. Rule 12.6.

At any rate, the application would be out-of-time. The date of the lower court judgment or order denying a timely petition for rehearing was March 14, 2005. Therefore the application for an extension of time was due on or before June 12, 2005. Rule 13.1 [sic. - 13.3], 30.1

and 30.2. When the time to file a petition for a writ of certiorari [in] a civil case has expired, the Court no longer has the power to review the petition or to consider an application for an extension of time to file the petition.

Sincerely,
William K. Suter, Clerk
By

s/ Jeffrey Atkins
Jeffrey Atkins
(202)-479-3263

Enclosures
cc: Robert B. Campbell, Jr.
David F. Grimaldi
Barbara A. Gaughan

APPENDIX RR

[Court of Appeals of Maryland Letterhead]

COURT OF APPEALS OF MARYLAND

Robert C. Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Md. 21401-1699

410-260-1500
1-800-926-2583

MEMORANDUM

To: All Judges

From: Alexander L. Cummings [Initialed ALC]

Date: December 8, 2004

Re: Robert B. Campbell, Jr. v. Baltimore Gas & Electric Company
Petition Docket No. 490, Sept. Term, 2004

In the cert. envelopes dated December 2, 2004 to be taken up by the Court during Bar Admissions, there is a pro se petition entitled Mercer v. Thomas, Petition Docket No. 434, September Term 2004. Mercer requested that a cert. petition recently filed in Campbell v. BGE be joined

with the Mercer petition for consideration by the Court at the same time.

Attached hereto is the Campbell petition.

ALC/cg
Attachment

TTY FOR DEAF: 410-260-1554

A True copy:
Test: Alexander L. Cummings, Clerk
Court of Appeals of Maryland
By: s/ Carol A. Greenstein Deputy Clerk

APPENDIX SS

3114 Borge Street
Oakton, Virginia 22124
August 10, 2005 [Filed]

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

RE: My August 1, 2005 Application for Extension of Time to File a Petition for Common-Law Writ of Certiorari for *In re* Gregory Shawn Mercer, Petitioner

Dear Honorable William K. Suter,

This letter attempts to be in accordance with Rules 22.4 & 30.4. There may not be a Rule for the aggrieved party to consult when an Application to an individual Justice for Extension of Time to File a Petition for Writ of Certiorari is denied in the first instance by the Clerk. However, as the aggrieved party I believe my Application has been denied by the Clerk via Jeffrey Atkins erroneously. My Application was denied by Mr. Atkins for two reasons (See Appendix [QQ at App. 175]):

> First, the Court of Appeals of Maryland had not consolidated Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company and Gregory Shawn Mercer v. William Aloysious Thomas, III.

Therefore, the caption for Campbell, supra, does not reflect me as a Party to the Record.

Second, Mr. Atkins concluded my Application for Extension of Time was untimely in accordance with Supreme Court Rule 30.2 because th application was not filed 10 days before June 12th, 2005.

THE COURT OF APPEALS OF MARYLAND JOINED THE CASES

The first reason for denial should be rectified with evidence that these cases were joined by the Court of Appeals of Maryland (See Appendix [RR at App. 177]). The Maryland Courts progress from District Court to Circuit Court to Court of Special Appeals of Maryland to Court of Appeals of Maryland (hereafter "DC," "CC," "COSA," and "COA" respectively). The Maryland Rules to consolidate cases in the DC and CC are Rule 3-503 and 2-503 respectively. ***There is no Maryland Rule to consolidate cases in the COSA or COA***. Maryland Rules 3-503, 2-503, 8-401, 8-421, & 8-503 may be of interest and state:

> Title 3 - Civil Procedures - District Court:
> **Rule 3-503. Consolidation; separate trials.**
> (a) *Consolidation*. (1) When permitted. When actions involve a common question of law ... (2) Transfer to the circuit court for consolidation.
> ...
> (b) *Separate trials*.

Title 2 - Civil Procedures - Circuit Court:

Rule 2-503. Consolidation; separate trials.

(a) *Consolidation.* (1) When permitted. When actions involve a common question of law ... (2) Verdict or Judgment. In the trial of a consolidated action, the court may direct that joint or separate verdicts or judgments be entered.

(b) *Separate trials.*

Title 8 - Appellate Review in the Court of Appeals and Court of Special Appeals:

Rule 8-401. Parties – Joinder and substitution.

(a) *Joinder not required.* A petition for writ of certiorari, an appeal, or an application for leave to appeal may be filed with or without the assent or joinder of coplaintiffs, codefendants, or other parties.

(b) *Substitution.* The proper person may be substituted for a party on appeal in accordance with Rule 2-241.

Rule 8-421. Docketing of appeals.

(a) *Generally.*

(b) *Separate appeals on the same record.* All appeals on the same record, whether in the same action or in two or more actions consolidated in the lower court, shall be docketed as one action on appeal.

Rule 8-503. Style and form of briefs.

FROM THE COURT OF APPEALS OF MARYLAND PETITIONS

1) Mercer v. Thomas, Petition Docket No. 434, COA Petition stated in Section I, page 19:

"In accordance with Rule 8-401(a) and because the issues in this Petition are so similar to the issues in Robert B. Campbell, Jr. v. Baltimore Gas & Electric Co., Case No. 87323051 / CL73959, **currently** in the Circuit Court for Baltimore City, Maryland, Petitioner herein seeks to join his Petition with any Campbell Petition in the future. Campbell, supra, is a case previously litigated in 1991 where a jury, likely with an attorney on it named Pauline Olsen, returned a favorable verdict for Campbell. The Judge missed the inference that the verdict was a Last Clear Chance verdict. A Last Clear Chance argument had been presented directly to the Judge when the jury had not been present and before the jury verdict. Subsequent to the jury verdict, the Judge granted a Judgment N. O. V. for defendant BG&E which erroneously stripped the $4.85 million Last Clear Chance jury award from Campbell. Petitioner believes the State of Maryland would benefit if both of these Petitions were heard together in the Court of Appeals of Maryland.

As of October 18, 2004, Campbell's Motion to Alter or Amend a Judgment - Court Decision with Opposition's Response had been forwarded to the Baltimore City Circuit Court Judge, the Honorable Carol E. Smith, for a ruling. Plaintiff Campbell has informed Petitioner of a desire to

immediately file a Notice of Appeal quickly followed by a Petition to the Court of Appeals if his Circuit Court Motion to Alter or Amend is denied. Also, Petitioner has been informed that Plaintiff Campbell hopes to help join the two potential Petitions in the Court of Appeals by his own efforts. At present, Plaintiff Campbell still awaits his final Order from the Baltimore City Circuit Court."

2) Campbell v. BG&E, Petition Docket No. 490, COA Petition stated in Section I, pages 20-21:

"In accordance with Rule 8-401(a) and because the issues in this Petition are so similar to the issues in Gregory Shawn Mercer v. William Aloysious Thomas, III, Petition No. 434, September Term 2004, Petitioner herein seeks to join his Petition with Petitioner Mercer's Petition. Mercer, supra, arose from a case previously litigated in 1998, CAL94-21066, where a jury found Petitioner Mercer Contributorily Negligent. Thereafter, in 2002, Petitioner Mercer properly discovered Respondent Thomas' truthful, insurance statement which exposed fraud in Respondent Thomas' 1997 deposition and 1998 trial, deposition testimony. But for Respondent Thomas' fraud in the trial of CAL94-21066, Petitioner Mercer alleges he would have been able to defend against Respondent Thomas' Contributory Negligence allegation with a Last Clear Chance defense and recovered.

Petitioner Mercer re-sued Respondent Thomas alleging fraud, CAL03-02711, and elected a jury trial. The Judge in CAL03-02711 dismissed Petitioner Mercer's Complaint due to a 3-year statute of limitations which began from Respondent Thomas' 1998 trial, deposition testimony and not from Petitioner Mercer's proper 2002 discovery of Respondent Thomas' truthful, insurance statement. Petitioner Mercer alleges he used ordinary diligence to discover Respondent Thomas' truthful, insurance statement prior to 2002 and the 3-year statute of limitations should end in 2005. Petitioner Mercer's elected right to a jury trial for injuries to his person and right to equal protection of the law which should allow him to argue his case with a Last Clear Chance defense are alleged to have been violated. Petitioner herein believes the State of Maryland would benefit if both his appeal and Petitioner Mercer's appeal were heard together in this Court."

PETITIONER HAS GOOD CAUSE AND EXTRAORDINARY CIRCUMSTANCE

My Application for Extension of Time was not untimely. However, *if Mr. Campbell had filed a similar Application on August 1st, his Application would have been untimely*. The 90th day for Mr. Campbell was Sunday, June 12th and *I expected* he would either join me or file his own Petition on or before June 13th with me. Though I encouraged him, he did neither of these. Hopefully, I named Mr. Campbell as a Respondent in Mercer v. Thomas, et al., No. 04-1676, which I filed and

this Court docketed on June 14th. Mr. Campbell then had until July 14th to file a Conditional Cross-Petition. He did not file a Conditional Cross-Petition though *I expected he would.*

I was surprised that Mr. Campbell abandoned his opportunity to go to the Supreme Court. In hindsight, there is a very good possibility that a settlement agreement exists between Respondents BG&E and Mr. Campbell to isolate me in the Supreme Court. Mr. Campbell had the opportunity to file a Petition in this Court twice and failed to do so. But I had no prior knowledge of what Mr. Campbell was going to fail to do. *I could not know the need to file an Application for an Extension of Time in Campbell's case if I expected him to file his own Petition for Writ of Certiorari to the COA on or before July 14th, 2005.*

As July 14th approached, I considered the possibility of a settlement between Respondents BG&E and Mr. Campbell. Before this deadline passed I filed a Motion to Order or Compel [to determine identity of the Campbell v. BG&E jury members] / Motion to Appoint Counsel for Jury / Motion to Extend Leave for Jury to Intervene and File a Conditional Cross-Petition for Writ of Certiorari (See Appendix [MM at App. 151]). This is in accordance with the 7th Amendment. My Motion was denied and returned by the Clerk in the first instance via Chief Deputy Clerk Christopher W. Vasil (See Appendix NN [at App. 159]).

Mr. Vasil stated this Court does not Order or Compel nor Appoint Counsel prior to a Petition being granted and scheduled for Oral Argument. This meant a Petition needed to be filed prior to counsel being appointed for the jury. I decided to use my standing as a joined COA party in Campbell v. BG&E to file a Petition for Common-Law Writ of Certiorari (*In re* Gregory Shawn Mercer, Petitioner). Campbell, supra, and Mercer, supra, share identical COA judgments, "denied as there has been no showing that certiorari is desirable and in the public interest." According to *In re* Leaf Tobacco Board, 222 U.S. 578 (1911), "One who is not a party to the record and judgment is not entitled to appeal therefrom."

As the 150th day after Campbell's COA petition for rehearing (Motion for Reconsideration) was denied (March 14, 2005) is August 11, 2005, I filed an Application to Chief Justice Rehnquist for Extension of Time to File Petition for [Common-Law] Writ of Certiorari to the Court of Appeals of Maryland on August 1st, 2005. This is in accordance with the 10-day requirement of Rule 13.5. My Application was denied and returned by the Clerk in the first instance via Jeffrey Atkins (See Appendix [QQ at App. 175]).

CONCLUSION

The COA used Maryland Rule 8-401(a) to join Mercer, supra, with Campbell, supra, before it issued identical judgments in each case. According to *In re* Leaf Tobacco Board, 222 U.S. 578 (1911), "One who is not a

party to the record and judgment is not entitled to appeal therefrom." I have standing to file a Petition for Common-Law Writ of Certiorari to the COA (*In re* Gregory Shawn Mercer, Petitioner).

I present an **extraordinary circumstance** to this Court in that I am attempting to make a jury a party before this Court in order that it may defend its unanimous verdict which a lower court reexamined and reversed after the jury was excused contrary to the 7th Amendment. I have **good cause** why my Application for Extension of Time to File Petition for [Common-Law] Writ of Certiorari to the Court of Appeals of Maryland was not filed 10 days prior to June 12th, 2005. *How could I know that Mr. Campbell would fail to file a Petition given two opportunities?* We stopped communicating shortly after January 21, 2005. I request my Application be sent to Chief Justice Rehnquist as soon as possible (Original and two copies enclosed). I will file the Petition as Appendix [TT at App. 189] to a Supplemental Brief in Mercer v. Thomas, et al., Petition No. 04-1676, filed on or before August 11, 2005. Respondents will have their full 30 days to file Briefs in Opposition after the Petition is docketed in accordance to Rule 15.3 if my Application is granted. *It would be an **extraordinary circumstance** if Respondent BG&E influenced or quietly settled with Respondent Campbell in order to evade review by this Court of a violation of the 7th Amendment to the United States Constitution.*

Respectfully submitted,

s/ Gregory Shawn Mercer

App. 188

Gregory Shawn Mercer, pro se
(703)-591-4662

APPENDIX TT

The document that follows is a Petition for Common- Law Writ of Certiorari to the Court of Appeals of Maryland in the case of Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company, Petition Docket No. 490, September Term 2004. Appendices L - W, II - KK, & OO relate to Campbell, supra. *What more can one man do to change a bad law that hurts people?*

No.

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE GREGORY SHAWN MERCER, PETITIONER

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not Maryland's highest court evaded federal questions in cases/appeals involving contributory negligence.

2. Whether or not the common law of contributory negligence can encourage and enable a Defendant by committing fraud to evade liability for Plaintiff's injuries and thereby deprive Plaintiff of a fair trial.

3. Whether or not the Trial Court's Judgment NOV was an irregularity subject to Maryland Rule 2-535(b) because the Trial Court ought to have recognized Campbell could steady the unextended ladder below the power line for a longer time without electrocution as long as the foreman or anyone else didn't extend the ladder up and into the power line which was the proximate cause of Campbell's injuries.

4. Whether or not Maryland's contributory negligence common law was used to violate Campbell's 7th U. S. Amendment right to preservation of a jury trial and Campbell's 14th U. S. Amendment right to due process / equal protection of the law.

5. Whether or not any (including Maryland's and West Virginia's) common law of contributory negligence is unconstitutional.

PARTIES TO THE PROCEEDING BELOW*

Petitioner, Plaintiff, Appellant is Gregory Shawn Mercer.

Respondent, Plaintiff, Appellant is Robert B. Campbell, Jr.

Respondent, Defendant, Appellees are Baltimore Gas and Electric Company, a body corporate and William Aloysious Thomas, III.

* The parties come before this Court from prior and separate litigation originating as Mercer v. Thomas, Case No. CAL 03-02711, in the Circuit Court for Prince George's County, Maryland, and Campbell v. BG&E, Case No. 24-C-87-323051, in the Circuit Court for Baltimore City, Maryland. Both Plaintiffs lost their cases in the Circuit Courts and appealed to the Court of Special Appeals of Maryland (hereafter COSA).

Mercer lost in the COSA and filed a Petition for Writ of Certiorari to the COSA in the Court of Appeals of Maryland (hereafter COA) on October 27, 2004. Campbell used Maryland Rule 8-302(a) to appeal from the COSA directly to the COA without waiting for a COSA Opinion. Campbell filed his Petition for Writ of Certiorari to the COSA in the COA on December 2, 2004.

Both Mercer and Campbell expressed an interest in having their Petitions joined in the COA. The COA denied both these Petitions for Writ on the same day, December 23, 2004, giving the substantive grounds for each that "there has been no showing that review by certiorari is desirable and in the public interest." Subsequent Motions for Reconsideration were filed by both Mercer and Campbell on January 21, 2005 and were denied on the same day, March 14, 2005.

Petitioner, herein, seeks review of a COA Order where two Petitions were joined (See Petition 04-1676, Appendix RR at App. 177 - App. 178). As a consequence, Petitioner has named the joined parties from the COA as Respondents to this Petition in accordance with Supreme Court Rules 12.4 to 12.6.

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PETITION FOR WRIT OF CERTIORARI

Gregory Shawn Mercer v. William Aloysious Thomas, III (Petition Docket No. 434, September Term 2004) in the Court of Appeals of Maryland (hereafter "COA") was joined with Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company (Petition Docket No. 490, September Term 2004) in the COA on or before December 23, 2004. See Mercer v. Thomas, et al., Petition No. 04-1676, *Appendix RR* at App. 177 (hereafter *Appendix RR* at App. 177). The Campbell, supra, Petition requested to be joined to Mercer, supra, on pages 20-21. The Mercer, supra, Petition requested to be joined to Campbell, supra, on page 19. On December 23, 2004, the COA issued identical judgments in both cases that day, "... denied as there has been no showing that review by certiorari is desirable and in the public interest." A joined party issued the same judgment, Gregory Shawn Mercer respectfully petitions for a **common-law writ of certiorari** to review the Order of the COA in Campbell, supra.

CAMPBELL v. BG&E OPINIONS

The Order of the COA in Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company (Petition Docket No. 490, September Term 2004, December 23, 2004) is reprinted in its entirety at *Appendix V* (App. 52). Because the questions presented to the COA concerned a critical review of the fairness and justness of Maryland's contributory negligence common law and the COSA could not consider these questions (See *Appendix F* at App. 9),

the Order of the COA was a final judgment from the Maryland Court of last resort. A Notice of Appeal to the COSA was filed November 8, 2004 (*Appendix JJ* at App. 126). Campbell did not pursue a COSA Opinion in this case subsequent to November 8, 2004 because the COSA was not the Maryland court of last resort. Campbell's COSA appeal was dismissed April 13, 2005. The Order of the Circuit Court for Baltimore City, Maryland (Case No. 24-C-87323051 / CL73959, September 16, 2004) is reprinted in its entirety at *Appendix T* (App. 50). The Order of the Circuit Court for Baltimore City, Maryland to a Motion to Alter or Amend a Judgment - Court Decision (Case No. 24-C-87323051 / CL73959, November 3, 2004) is reprinted in its entirety at *Appendix U* (App. 51). An Order of the COA in the previous appeal of Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company (Petition Docket No. 117, September Term 1993, July 21, 1993 reported as 331 Md. 196, 627 A.2d 538 (1993)) is reprinted in its entirety at *Appendix Q* (App. 47). The previous Opinion of the COSA in Robert B. Campbell, Jr. v. Baltimore Gas and Electric Company (No. 732, September Term 1992, February 1, 1993 reported as 95 Md. App. 86, 619 A.2d 213 (1993)) is reprinted in its entirety at *Appendix O* (App. 32). The previous Judgment of the Circuit Court for Baltimore City, Maryland (Case No. 87323051 / CL73959, December 13, 1991) is reprinted in its entirety at *Appendix N* (App. 30). The previous Opinion of the Circuit Court for Baltimore City, Maryland (Case No. 87323051 / CL73959, December 13, 1991), was transcribed and is reprinted in its entirety at *Appendix M* (App. 27). *Appendix M* (App. 22) is the

polling of the unanimous jury which was excused from the courtroom immediately preceded the 12/13/91 Opinion of Circuit Court (*Appendix M* at App. 27). That 12/13/91 Opinion granted a Judgment Notwithstanding the Verdict to Respondent BG&E after a jury pronounced its verdict in favor of Respondent Campbell and was excused from the courtroom. Petitioner herein alleges this was a violation of the 7th U. S. Amendment.

CAMPBELL v. BG&E JURISDICTION

To aid this Court's appellate jurisdiction, 28 U. S. C. § 1651(a) is invoked. In opposition to the 7th Amendment, the unanimous Campbell jury voted on a verdict and was disenfranchised. Petitioner uses his standing to petition this Court to appoint counsel for the unanimous Campbell jury (*Appendix M* at App. 22) to give it the opportunity to move to intervene.

The jury intervenor would seek this Court's review of the Order entered in Campbell v. BG&E on December 23, 2004, by the COA. The COA denied Respondent Campbell's Motion for Reconsideration by Order at *Appendix W* (App. 53) entered on March 14, 2005 and prior to Campbell missing the COSA deadline to file a Brief of Appellant, March 23, 2005. Additionally, the Jurisdiction of this Court would be invoked pursuant to 28 U. S. C. § 1257(a). In accordance with Hunter v. Ohio ex rel. Miller, 396 U. S. 879 (1969), the jurisdiction of this Court would likewise be invoked pursuant to 28 U. S. C. § 1257(a) which replaced 28 U. S. C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment VII to the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Amendment XIV to the United States Constitution, section 1 provides, in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Maryland, Declaration of Rights, Article 5 provides, in pertinent part:.

> (a) That the Inhabitants of Maryland are entitled to the Common Law of England, and the trial by Jury,

> according to the course of that Law, and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six; and which, by experience, have been found applicable to their local and other circumstances, and have been introduced, used and practiced by the Courts of Law or Equity; and also of all Acts of Assembly in force on the first day of June, eighteen hundred and sixty-seven; except such as may have since expired, or may be inconsistent with the provisions of this Constitution; subject, nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State. And the Inhabitants of Maryland are also entitled to all property derived to them from, or under the Charter granted by His Majesty Charles the First to Caecilius Calvert, Baron of Baltimore.
> (b) The parties to any civil proceeding in which the right to a jury trial is preserved are entitled to a trial by jury of at least 6 jurors.

Constitution of Maryland, Declaration of Rights, Article 19 provides:

> That every man, for any injury done him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

Constitution of Maryland, Declaration of Rights, Article 20 provides:

> That the trial of facts, where they arise, is one of the greatest securities of the lives, liberties and estate of the People.

Constitution of Maryland, Declaration of Rights, Article 23 provides:

> In the trial of all criminal cases, the Jury shall be the Judges of Law, as well as of fact, except that the Court may pass upon the sufficiency of the evidence to sustain a conviction.
>
> The right to trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of $10,000, shall be inviolably preserved.

Constitution of Maryland, Declaration of Rights, Article 24 provides:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the Land.

28 U.S.C. § 1257(a) states:

State courts; certiorari
Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

28 U.S.C. § 1651(a) states:

Writs
The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Maryland Annotated Code, Article 89, §§ 58 - 61

§ 58. "High-voltage lines" defined.
For the purposes of this subtitle, "high-voltage lines" shall mean an electric line or lines which are installed above ground level, having a voltage in excess of 750 volts between conductors from any conductor to ground. For the purposes of this subtitle all electric lines are considered to be

energized at all times from and after installation or erection, and shall be assumed to be in excess of 750 volts until otherwise determined from owner or operator of such line. (1968, ch. 759).

§ 59. Duty of Employer to comply with § 60.
No person, firm or corporation shall perform, or require or permit any employee to perform, any act prohibited by § 60 hereof unless and until danger from accidental contact with high-voltage lines has been effectively guarded against in the manner prescribed in § 60. (1968, ch. 759).

§ 60. Activities prohibited near high-voltage lines without safeguards.
The operation, erection, handling, storage or transportation of any tools, machinery, equipment, supplies, materials, or apparatus, including but not limited to antennas, antenna supports, flagpoles, and other similar facilities, the moving of any house or other building or structure, or any part thereof, and the performing of tree trimming or activities of like nature, under, over, by or near high-voltage lines is hereby expressly prohibited, if at any time during the course thereof any part of any person or object will come or be brought within ten feet of any high-voltage lines, unless such high-voltage lines have first been effectively guarded against dangerous accidental contact, and appropriate protective arrangements shall have first been made with the owner or operator of such high-voltage

lines, by either:

1. The installation of physical barriers to prevent physical contact with such high-voltage lines; or
2. The relocation of such high-voltage lines, either laterally or vertically; or
3. The de-energizing of such high-voltage lines and the grounding of same; provided, however, that nothing herein shall be construed, or shall operate to impose upon any owner or operator of any high-voltage lines the duty or obligation to effect any such precautionary measure at his or its expense or to obligate any such owner or operator to de-energize or ground any high-voltage lines if service to the public would thereby be substantially interfered with or if the health, safety or welfare of the public would thereby be endangered. (1968, ch. 759).

§ 61. Activities within ten feet of high-voltage lines; duty of owners, etc., of cranes, etc.

(a) When any such operation, erection, handling, storage, transportation or moving is to be performed within ten feet of any high-voltage lines, the person or persons responsible for performing the same shall promptly notify the owner or oper. or of the high-voltage lines of the work to be performed and such person or persons shall be responsible for the provision, subject to any necessary agreement of the owner or operator of the high-voltage lines, of one

or more of the safety measures required by § 60 of this article before proceeding with any work within said ten feet.

(b) Upon notification and appropriate arrangements being made by such person or persons, and within a reasonable time thereafter under all the circumstances involved, the owner or operator of the high-voltage lines shall perform such acts as are reasonably necessary for such owner or operator to perform, as set forth in and subject to the provisions of § 60 hereof, to guard against danger from accidental contact.

(c) It shall be the duty and responsibility of the owner, lessee or employer of any equipment, including but not limited to cranes, derricks, power shovels, trimming rigs, pile drivers or similar apparatus, any part of which may be used near any high-voltage lines, to:

(1) Acquaint themselves and their employees with this law and the rules and regulations prescribed and promulgated pursuant to § 62 hereof, and:

(2) Post and maintain in clear view of the operators of such equipment a permanent, weather resistant warning sign, legible at 12 feet, reading "unlawful to operate this equipment within 10 feet of any electric wire." The warning sign required in subsection (c)(2) shall be:

(1) Placed in clear view of the operator when he is at the controls of

the equipment;
(2) Placed on the boom of any crane or derrick so that when the boom is raised, the sign is at the eye level of the operator; and
(3) Placed on the outside of all equipment so that it is in clear view of any person assisting the operator from outside the equipment. (1969, ch. 759; 1973, ch. 121).

In accordance with Supreme Court Rule 33.1(d), this Petition contains verbatim text and may be 37 and a half pages long.

STATEMENT OF CASES

Campbell v. BG&E (App. L - W, II - KK, & OO):

Maryland Rule 2-535(b) - **Revisory power**.
(b) *Fraud, mistake, irregularity*. On motion of any party filed **at any time**, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Campbell filed a Motion for Revisory Powers in the Circuit Court for Baltimore City (*Appendix T* at App. 50) on August 24, 2004.

On April 7, 1986, William P. Sieglein owned SRSC and had 35 years experience with siding installation. The company had two employees at that time. Mark S. Jenkins

was the SRSC foreman with 13 years experience working for SRSC and Robert B. Campbell, Jr. was supervised by this foreman. Jenkins was owner Sieglein's 32-year-old nephew and Campbell was 19-years-old at that time.

SRSC owner, as an employer, was required to notify BG&E whenever his employees would be working within ten feet of BG&E power lines (Maryland Annotated Code, Article 89, §§ 58-60).

Prior to April 7, 1986, the SRSC employer had examined 2 Bloomingdale Avenue and wrote an estimate for future work at the new work site without notifying BG&E that power lines, which were located in plain view, were 9 feet 10 inches from roof eaves on the house at that property. SRSC employees would be installing a form of siding called soffit under these eaves and fascia to the rake boards on the ends of these eaves (SRSC's Primary Negligence).

On April 7, 1986, both SRSC employees were reasonably expected to work within ten feet of BG&E's power lines located in plain view just outside or on the perimeter of this new work site yet the SRSC employer had not notified BG&E of these facts (More SRSC's Primary Negligence).

After arriving at 8:30 a.m. on April 7, 1986, the SRSC employer and the SRSC foreman walked around the job site discussing the work to be done while Campbell worked outside of hearing range setting up a work table. Campbell noticed power lines outside the fence around perimeter of the new job site. The employer warned his foreman to watch for these power lines while working and then the employer left the job site to estimate future work

at another job site (Primary Negligence situation of peril notice, Primary Negligence not concurrent with Contributory Negligence).

SRSC foreman supervised Campbell. At about 10:15 a.m., the foreman called Campbell over from the work table and directed Campbell to steady a 40-foot aluminum ladder just inside the fence around the perimeter of the job site and below BG&E power lines. The power lines were in plain view (Campbell did not assume the risk for his injury).

The SRSC employer was not at the work site at this time. The ladder was originally leaning against the house at the job site. The ladder was brought vertical and steadied with Campbell bracing himself against the fence. While Campbell steadied the ladder, the SRSC foreman pushed up on the ladder extension while looking upward toward the power lines located in plain view. The foreman pushed up on the extension with one of his feet on the ladder's lowest rung (Maryland Annotated Code, Article 89, §§ 58, 60-61 attached hereto - Campbell's Contributory Negligence, Contributory Negligence not concurrent with Primary Negligence, Last Clear Chance fresh opportunity of a considerable amount of time).

Campbell's Contributory Negligence was not causing any injury to this point as the ladder was being steadied by Campbell with the top of the ladder below all power lines. It was the next extension of the ladder by the SRSC foreman that would cause Campbell's injury (Campbell's Contributory Negligence was not a cause of injury).

SRSC foreman pushed up on the ladder a third time

while looking upward toward the line-to-ground, RMS, 7,600-volt power line located in plain view above with his feet on the second and third rungs of the ladder and until electrical contact was made between the power line and the top of the ladder. The SRSC foreman was not electrically grounded and jumped off the ladder while the Campbell suffered near fatal, severe, deforming injuries and burns throughout his body which have left him permanently disabled (Maryland Annotated Code, Article 89, §§ 58, 60-61 attached hereto - SRSC's Secondary Negligence, Secondary Negligence situation of peril notice).

In subsequent litigation but prior to trial, BG&E sued "William Sieglein t/a [trading as] Sieglein Roofing and Siding Company" and "Mark Jenkins".

The available Last Clear Chance defense that existed for the Campbell at the end of all evidence was:

a) SRSC employer was Primarily Negligent (Maryland Annotated Code, Article 89, §§ 58-60).

b) SRSC employer was aware of the Primary Negligence situation of peril and communicated a warning concerning this to the SRSC foreman.

c) Campbell was Contributorily Negligent (Maryland Annotated Code, Article 89, §§ 58, 60-61).

d) Campbell's Contributory Negligence by itself was not sufficient to cause his injuries.

e) Primary and Contributory Negligence were not concurrent so SRSC clearly made the original mistake.

f) SRSC foreman was Secondarily Negligent (Maryland Annotated Code, Article 89, §§ 58, 60-61).

g) Secondary Negligence was new and independent

of Primary Negligence.

h) SRSC foreman looked upward toward the line-to-ground, RMS, 7,600-volt power line which was located in plain view above while pushing up on the ladder extension and was aware of the Secondary Negligent situation of peril previously brought to his attention by the SRSC employer a couple hours earlier (Maryland Annotated Code, Article 89, §§ 58, 60, and 61).

i) The Last Clear Chance fresh opportunity was of a considerable amount of time as compared to 7.33 seconds in Cohen v. Rubin, 55 Md. App. 83, 460 A.2d 1046 (1983) where a Last Clear Chance defense was used successfully.

Circuit Court instructed Jury twice. Once after it requested re-instruction while deliberating, Motion for Revisory Powers, page 4:

> 7. The jury received jury instructions, began deliberation, then requested to be re-instructed on Contributory Negligence:
>
> A Plaintiff cannot recover if his negligence is a cause of his injury. ... To ... be barred, the negligence must be a cause of an injury.
>
> A Plaintiff cannot recover if his negligence is a cause of his injury.

After Cohen v. Rubin, 55 Md. App. 83, 460 A.2d 1046 (1983), any Maryland Jury was empowered to deliberate with the Last Clear Chance theory. The actual

Jury Verdict Sheet in Robert B. Campbell v. Baltimore Gas and Electric Company, Case No. 87323051 / CL73959, December 13, 1991 with the Jury findings (App. L & M) was:

1. Was BG&E negligent? Yes _X_ No ____
2. Was Robert Campbell contributorily negligent?
   If the answer to #2 is "no," then continue; if "yes," then stop.
   Yes ____ No _X_
3. Did Robert Campbell assume the risk of his injury? Yes ____ No _X_
4. Was Mark Jenkins negligent?
   Yes ____ No _X_
5. Was William Sieglein negligent?
   Yes _X_ No ____
6. In what amount do you award damages?
   $ 4,850,000

If the jury determined Campbell was contributorily negligent but not the cause of his injury and deserving of a jury award in accordance with the jury instructions, how would they answer question #2? The instructions after question #2 prevent the jury from continuing so as to be able to answer question #6 and give Campbell a jury award.

This Jury Verdict was a Last Clear Chance Jury Verdict:

> William Sieglein was most associated with SRSC in the trial due to BG&E suing "William P. Sieglein trading as Sieglein Roofing and Siding Company".

Sieglein's Motion Inlimini to prevent BG&E from referring to Sieglein the individual as the person responsible for notifying BG&E of the proximity of power lines to SRSC employees had been denied. SRSC foreman Mark Jenkins was not negligent, the company he worked for was negligent. Robert Campbell's Contributory Negligence was not a cause of his injury, SRSC foreman's pushing up to extend the ladder was the proximate cause of Campbell's injury in accordance with the Jury Instructions given two times. Robert Campbell had been directed by his supervising foreman to hold the ladder steady. Additionally, the Jury found BG&E to be negligent. Therefore, Campbell could have and should have recovered the Jury award from SRSC and BG&E jointly and severally.

The Jury Verdict Sheet ambiguous Question No. 2:

Was Robert Campbell contributory negligent?

Yes ___ No ___

To avoid ambiguity, the Jury Verdict Sheet Question No. 2 should have been:

Was Robert Campbell contributory negligent and, if so, was his contributory negligence a cause of his injuries?

Yes ____ No ____

At trial, there was prospective juror #3 who was a personal injury attorney, Pauline Olsen. Motion for Revisory Powers, pages 5-6:

14. Prospective Juror No. 3, attorney Pauline Olsen (spelled phonetically "Olson" in Transcript) [12/4/91 Trial Transcript pages 8, 43, 58, 63 - 64], was at the top of the juror list after Voir Dire but before the four trial counsel exercised their strikes (4 each). This prospective juror knew of Last Clear Chance theory. The Trial Judge informed counsel the jurors were to be seated starting from the top of the juror list [page 63].

Petitioner's Request for Jury Instructions included a Comparative Negligence Instruction, Request No. 16. The Circuit Court denied this instruction and Petitioner noted his exception:

If you find that plaintiff was negligent, and that his negligence contributed to his injuries, then you must determine the relative contributions (on a percentage basis) of the defendant BG&E's negligence and the plaintiff's negligence to those injuries and damages. Your assessment of the dollar value of the plaintiff's damages will then be reduced by the Court by the percentage which you attribute to the plaintiff's negligence.

Campbell's Trial Attorney, William F. Gately, presented Campbell's *last chance* defense to the Baltimore City trial judge while the jury had retired (*Appendix II* at App. 121). Despite this, the trial judge missed what the jury concluded after deliberation. The Jury had the evidence at presented to it that SRSC foreman Mark Jenkins was the one who pushed the ladder extension into the power line and caused Campbell's life threatening

injuries while Campbell passively had the ladder in the vertical position.

Maryland Rule 2-519(b & d) - **Motion for Judgment**.

> (b) *Disposition.* When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.
>
> (d) *Reservation of decision in jury cases.* In a jury trial, if a motion for judgment is made at the close of all evidence, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge the jury. For the purpose of appeal, the reservation constitutes a denial of the motion unless a judgment notwithstanding the verdict has been entered.

Maryland Rule 2-532(e) - **Motion for judgment notwithstanding the verdict (J. N. O. V.)**.

> (e) *Disposition.* If a verdict has been returned, the court may deny the motion, or it may grant the

> motion, set aside any judgment entered on the verdict, and direct the entry of a new judgment. If a verdict has not been returned, the court may grant the motion and direct the entry of judgment or order a new trial. If a party's motion for judgment notwithstanding the verdict is granted, the court at the same time shall decide whether to grant that party's motion for a new trial, if any, should the judgment thereafter be reversed on appeal.

Maryland Rule 2-535(b) - **Revisory power**.

> (b) *Fraud, mistake, irregularity.* On motion of any party filed **at any time**, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Campbell filed a Motion for Revisory Powers in the Circuit Court for Baltimore City (*Appendix T* at App. 50) on August 24, 2004. Petitioner attached a copy of this Motion for Revisory Powers to his Motion for Reconsideration in the COSA (*Appendix I* at App. 17).

The Circuit Court judge recognized it could not grant a J. N. O. V. if there was any way the Jury decision was reasonable, "no matter how slight," (*Appendix M* at App. 27 - 28) as did the COSA, "however slight," (*Appendix O* at App. 39)

REASON FOR GRANTING THE WRIT

First and foremost, does the Supreme Court have

jurisdiction. The Court of Appeals hasalready ruled on December 23, 2004. The sole appellate jurisdiction lies in this Court. "But where, as here, sole appellate jurisdiction lies in this Court, application for a common law writ in aid of appellate jurisdiction must be to this Court." United States Alkali Export Association, Inc. v. United States, 325 U. S. 196, 202 (1945). The jury has no representation, Campbell has failed to file a Petition, and BG&E wants this matter to die as it can only reduce BG&E's assets. As a joined party who shares the same judgment as Campbell, Petitioner has standing to petition this Court for a common-law writ of certiorari.

There was no communication between Campbell and Petitioner to alert Petitioner that Campbell would abandon his Supreme Court opportunity. In fact, Respondent BG&E would have preferred that Petitioner not be notified of settlement negotiations prior to deadlines.

The common-law writ is useful here "...because there are in issue important questions regarding the relation between the [Maryland Contributory Negligence law] and the [7th Amendment]." Far East Conference v. United States, 342 U. S. 570, 572 (1952).

Is there an independent and adequate state ground to keep the Supreme Court out of a matter involving a 7th Amendment right to a preserved jury trial. Certainly, Maryland Declaration of Rights Articles 5(b), 20, and 23 encourage the grant of the preserved jury trial.

The 7th Amendment gives the jury standing to defend its unanimous verdict (*Appendix M* at App. 22 - 27). The Baltimore City trial judge erroneously overturned

the jury verdict. The jury should be allowed the opportunity to defend their unanimous verdict through appointed counsel by this Court.

Included by reference herein are Petitioner's Petition, Supplemental Briefs, Reply to Brief in Opposition and all Appendices in Mercer v. Thomas, et al., Petition No. 04-1676.

Maryland is making great strides to keep contributory negligence while its citizens suffer.

CONCLUSION

For the reasons stated herein, Petitioner prays this Court to grant his petition for certiorari.

Respectfully submitted,

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Supreme Court, U.S.
FILED
AUG 30 2005
OFFICE OF THE CLERK

No. 04 - 1676

IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY SHAWN MERCER,

Petitioner,

V.

WILLIAM ALOYSIOUS THOMAS, III, ET AL.,

Respondents.

On Petition For Writ of Certiorari
To The Court of Appeals of Maryland

SUPPLEMENTAL BRIEF WITH APPENDIX VV:

MOTION TO PUT PETITION *"In re* GREGORY SHAWN MERCER, PETITIONER" ON DOCKET

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SUPPLEMENTAL BRIEF

F. Petitioner's letter to the Honorable William K. Suter (*Appendix SS* at App. 179) requesting the clerk-denied Application (*Appendix PP* at App. 168) be sent to Chief and Circuit Justice Rehnquist was denied on August 11, 2005 (*Appendix UU* at App. 190). Petitioner filed a Motion to Put Petition on Docket [*Appendix TT* at App. 189: *In re* Gregory Shawn Mercer, Petitioner] served on August 16, 2005 but filed just after midnight on August 17, 2005 (*Appendix VV* at App. 192). The Motion included docket entries from the COA in Petition Docket Nos. 434 [Mercer v. Thomas] and 490 [Campbell v. BG&E], September Term, 2004 (*Appendix WW* at App. 198). The clerk denied this Motion in the first instance 8/22/05 with the continued rationale that Petitioner was not a party to the Record in Campbell, supra (*Appendix XX* at App. 203).

G. ARGUMENT: It is the Petitioner's responsibility to clearly present the issues in Campbell, supra. The objective of BG&E would be to confuse this presentation of issues to keep a Petition for Common-Law Writ of Certiorari off this Court's docket or get it denied. BG&E can not benefit from this Court granting certiorari to review Campbell, supra. BG&E's past strategy may have been to attack this Court's appellate jurisdiction with a settlement offer to permanently disabled Campbell influencing him to stop cooperating with Petitioner. Any BG&E settlement offer may be invalid due to furtherance of a 7th Amendment violation. After January 21, 2005, Campbell stopped cooperating with Petitioner. Campbell

never filed any Petition in this Court for whatever reason. The effect served BG&E's interests. The objective of the COA seems to have been to continue the Contributory Negligence common-law adopted in Irwin v. Spriggs, 6 Gill 200 (1847). 46 of the other states in the United States have Comparative Negligence laws (*Appendix HH* at App. 114). The strategy of the COA was to render ambiguous the attempts to join COA Petitions for Writ of Certiorari to the COSA (September Term, 2004, Nos. 434 and 490) effectively complicating Petitioner's attempts to file a Petition for Common-Law Writ of Certiorari to the COA in this Court. **This Common-Law Writ may be needed to aid this Court's appellate jurisdiction in accordance with 28 U.S.C. §1651(a) and Supreme Court Rule 20.1.**

H. FACTS: The COA Petition Docket Nos. 434 and 490 requested to be mutually joined in accordance with Maryland Rule 8-401(a) and heard together (**Please read** *Appendix SS* at App. 180 - 184). Mercer's COA Petition No. 434 was filed October 27, 2004 and Campbell's COA Petition No. 490 was filed on December 2, 2004. Petitioner filed a Praecipe in the COA informing the COA Clerk of these mutual Petition requests on December 2, 2004 (*Appendix YY* at App. 205). On December 8, 2004, the COA Clerk sent the COA Judges a Memorandum attached to Petition Docket No. 490 that Petitioner requested COA Petition Docket Nos. 434 and 490 joined and considered at the same time (*Appendix RR* at App. 177). The COA issued simultaneous and identical orders in both cases/appeals first on December 23, 2004 (*Appendices J & V* at App. 18 & 52) and again on March

14, 2005 (*Appendices K & W* at App. 19 & 53). The COA docket entries **indicate simultaneous and identical denial orders** for Petition Docket Nos. 434 and 490 on both these dates without comment on whether the cases/appeals were or were not joined (*Appendix WW* at App. 199 & 202).

While Petitioner expected Campbell to file a Petition for Writ of Certiorari to the COA, Campbell missed his 90-day deadline to file on Monday, June 13, 2005. As this deadline was approaching, Petitioner asked Campbell if he would agree to be a joined party on Petitioner's Petition. Campbell declined while considering filing a Conditional Cross-Petition. While Petitioner expected Respondent Campbell to file a Conditional Cross-Petition within 30 days after June 14, 2005 based on his prior cooperation with Petitioner in the COA, Campbell did not file. *Petitioner was misled by Campbell and this Court's appellate jurisdiction has been hampered in Campbell, supra, as a result.* Petitioner never knew to file an Application for Extension of Time in Campbell, supra, ten days prior to June 12, 2005 because Campbell never informed Petitioner he had abandoned any thought of filing some kind of Petition prior to July 14, 2005. Petitioner filed an Application (*Appendix PP* at App. 168) on the 140th day and *In re* Gregory Shawn Mercer, Petitioner (*Appendix TT* at App. 189) on the 150th day after 3/14/05.

"One who is not a party to a record and judgment is not entitled to appeal therefrom." *In re* Leaf Tobacco Board, 222 U.S. 578 (1911). Petitioner was a party to the same "Judgment" as in Campbell, supra. While the COA has left the question of whether COA Petition Docket Nos. 434 and 490 were joined ambiguous, if a Petition for Writ

of Certiorari to the COA was timely filed in Campbell, supra, this Court would have appellate jurisdiction to review the Campbell COA case/appeal for two reasons in accordance with Supreme Court Rule 10(b & c) (**Please read** *Appendix VV* at App. 195 - 196):

> Rule 10(b): Maryland decided Campbell, supra, in a way which conflicts with a nearly identical West Virginia case, Bradley v. Appalachian Power Company, 163 W. Va. 332, 256 S. E.2d 879 (1979) (See *Appendix KK* at App. 129, 131 - 148).
>
> Rule 10(c): Maryland's common-law of Contributory Negligence was used by the Circuit Court for Baltimore City to reverse a rational and lawful jury verdict thus violating the 7th Amendment to the United States Constitution in Campbell, supra (See *Appendix M* at App. 22 - 29).

Since Respondent Campbell was either influenced or chose not to file a Petition by the 90th day nor filed a Conditional Cross-Petition by the 30th day after becoming a Respondent, *Respondent Campbell has hampered this Court's appellate jurisdiction in Campbell, supra*. Since the COA has left the question of whether Petitioner was a joined party to the "Record" of Campbell, supra, ambiguous, the COA has hampered Petitioner's attempt to file a Petition for Common-Law Writ of Certiorari to the COA in this Court for Campbell, supra, in accordance with Supreme Court Rule 20.1, 20.2, and 28 U.S.C. §1651(a) (See *Appendices MM - YY* at App. 151 - 206). *The COA*

has thereby hampered this Court's appellate jurisdiction. The first of the Questions Presented for Review in this Petition No. 04-1676 is: "Whether or not Maryland's highest court evaded federal claims in cases/appeals involving contributory negligence." *Petitioner herein argues that the COA left whether Petition Docket Nos. 434 and 490 were joined as ambiguous* ***by design*** *(**See "correction fluid" at App. 200**) to hamper this Court's appellate jurisdiction attempting to prevent Petitioner from filing a Petition for Common-Law Writ of Certiorari.*

I. The Reply to Brief in Opposition to *In re* Gregory Shawn Mercer, Petitioner would include the following case law if that joined Petition had been put on this Court's docket prior to consideration of this Petition, No. 04-1676:

In re Gregory Shawn Mercer, Petitioner attempts to use Petitioner's standing as a joined party in Campbell, supra, to bring that COA case/appeal before this Court by Common-Law Writ of Certiorari and have this Court appoint counsel for the December 1991, Campbell v. BG&E jury. Hunter v. Ohio ex rel. Miller, 396 U.S. 879 (1969) permits the Campbell v. BG&E jury to intervene in a case/appeal coming to this Court from a state court. Should the jury via Court-appointed counsel choose to move to intervene in Campbell, supra, case law exists.

In United States Alkali Export Association, Inc. et al. v. United States, 325 U.S. 196 (1945), a question of whether the District Court or the Federal Trade Commission had jurisdiction in the first instance over a matter at bar was resolved by this Court. The Webb-Pomerene Act did not preclude suit before the Commission

had acted. This appeal came before this Court via a common-law writ of certiorari using §262 of the Judicial Code: "The Supreme Court ... shall have power to issue all writs not specifically provided by statute, which may be necessary for the exercise of [its] respective jurisdiction, and agreeable to the usages and principles of law." Further, "But where, as here, sole appellate jurisdiction lies in this Court, application for a **common law writ in aid of appellate jurisdiction** must be to this Court." This Court's use of a writ in United States Alkali Export Association, supra, was "analogous to those in which this Court has, by writs issued under §262, reviewed the action of district courts, alleged to be in excess of their authority, by ... which they have deprived a party of a trial by jury. *Ex parte Simons*, 247 U.S. 231 [1918]; *Ex parte Peterson*, 253 U.S. 300, 305 [1920]."

In *In re* Simons, Plaintiff's contract for personal attendance and care prior to death of testatrix Mrs. Frank Leslie was to be paid after probate of Leslie's will via bequest from her legacy which would accrue additional interest. Plaintiff's two-count action against the executor of Leslie's will alleged $50,000 in damages. A District Court judge transferred the first count to the equity side of the District Court and removed the count from the original action in error depriving plaintiff of her 7th Amendment right to a trial by jury. Plaintiff's Petition for mandamus, or, if that is denied, for prohibition or certiorari, to the District Court was filed.

This Court regarded the lower court order as having repudiated jurisdiction of the first count ruling "mandamus may be adopted to require the District Court to proceed

and to give the plaintiff her right to a trial at common law."

In *In re* Peterson, Plaintiff filed an action for $21,014.43 for coal deliveries against Defendant who, in turn, alleged Plaintiff's accounting had omissions of other coal deliveries and other payments made. Defendant's counterclaim alleged $9,999.10 against Plaintiff. Upon Defendant's motion, a District Court judge appointed an auditor to simplify the issues for the jury including separating items into disputed or no real dispute categories and setting forth the detailed facts on which the specific claims were rested. This required the auditor to express his opinion on disputed issues such as "[h]is opinion as to the net amount due on each invoice of coal sold and delivered to defendant." A Petition for Writs of Mandamus and/or Prohibition to the District Court was filed in this Court to stop the auditor and judge from proceeding, "to restore the case to the trial calendar, and that the same be tried in the regular and usual way."

This Court considered the objection made by the Respondent to the jurisdiction of this Court:

> But if proceedings pursuant to the appointment of an auditor would deprive petitioner of his right to a trial by jury, the order should, as was said in Ex parte Simons, 247 U.S. 231, 239, 38 S. Sup. Ct. 497 (62 L. Ed. 1094) 'be dealt with now, before the plaintiff is put to the difficulties and the courts to the inconvenience that would be raised by' a proceeding 'that ultimately must be held to have been required under a mistake.' The objection to our jurisdiction is unfounded.

This Court only took issue with whether the expense of the auditor should be paid by one or both of the parties in accordance with the determination of the trial judge instead of abiding the result of the action. This Court denied any extraordinary writs. It was decided that the 7th Amendment to the United States Constitution "does not require that old forms of practice and procedure be retained. [Case law omitted]. It does not prohibit the introduction of new methods for determining what facts are actually in issue, nor does it prohibit the introduction of new rules of evidence. Changes in these may be made."

According to United States Alkali Export Association, supra, where district courts were alleged to be in excess of their authority, §262 of the Judicial Code was used to bring cases before this Court. Where a state court of last resort, the COA, has refused to rectify an instance where a lower state court allegedly used Maryland's Contributory Negligence common law to violate the 7th Amendment to the United States Constitution by erroneously overturning a valid and rational jury verdict in Campbell, supra, review by certiorari via §262 of the Judicial Code is proper. The next case law likens §262 of the Judicial Code to 28 U.S.C. §1651(a).

In Far East Conference et al. v. United States et al., 342 U.S. 570 (1952), a conference of steamship companies was sued by the United States for violations under the Sherman Antitrust Act in District Court prior to initial consideration of the circumstances in controversy by the Federal Maritime Board. The Conference moved for complaint dismissal on the grounds that the nature of the issues required that resort must first be had to the Federal